



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER M-1003

Appeal M-9700175

Halton Regional Police Services Board



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NATURE OF THE APPEAL:

The appellant made a request to the Halton Regional Police Services Board (the Police) under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request was for access to all correspondence relating to the appellant. The appellant is particularly interested in information relating to a specific occurrence and any materials which would cause the officer involved to write that the requester is related to an individual whom the officer described in a specific manner.

The Police granted partial access to two records they identified as responsive to the request. The two records are an occurrence report and a police officer's notes. The Police granted access to the police officer's notes, but denied access to portions of the occurrence report, claiming the exemptions found in sections 8(1)(c) and (g), 8(2)(a) and (c) (law enforcement) and section 38(a) (discretion to refuse the requester's own information).

The appellant appealed the decision of the Police. After being notified of the appeal, the Police issued a revised decision, adding section 38(b) (invasion of privacy) to the exemptions previously claimed for the severed parts of the occurrence report. The Police also refused to confirm or deny the existence of any other records pursuant to sections 8(3) and 14(5) of the Act.

During mediation of the appeal, the appellant narrowed the scope of his appeal such that only the decision of the Police to refuse to confirm or deny the existence of additional records pursuant to sections 8(3) and 14(5) of the Act remains at issue.

DISCUSSION:

REFUSAL TO CONFIRM OR DENY THE EXISTENCE OF A RECORD

The Police submit that, if records of the nature requested exist, they would qualify for exemption under sections 8(1)(c), (g), 8(2)(a) and (c) of the Act. These sections provide that:

- (1) A head may refuse to disclose a record if the disclosure could reasonably be expected to,
 - (c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;
 - (g) interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons;
- (2) A head may refuse to disclose a record,
 - (a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;

[IPC Order M-1005/September 23, 1997]

- (c) that is a law enforcement record if the disclosure could reasonably be expected to expose the author of the record or any person who has been quoted or paraphrased in the record to civil liability.

In order for records of the type requested, if they exist, to qualify for exemption under sections 8(1)(c), (g), 8(2)(a) or (c), the matter which would have generated the records must satisfy the definition of the term “law enforcement” as found in section 2(1) of the Act. This definition reads:

“law enforcement” means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b).

The purpose of the exemptions contained in section 8(1) is to provide the Police with the discretion to preclude access to records in circumstances where disclosure of the records could reasonably be expected to result in one of the harms set out in this section. The Police bear the onus of providing sufficient evidence to establish that the disclosure of the records, if they exist, could reasonably be expected to result in the harm which is alleged.

Having reviewed the representations of the Police, I am satisfied that records of the type requested, if they exist, would relate to a law enforcement matter, as that term is defined in section 2(1) of the Act. I also find that the Police have established that the disclosure of the information contained in records of the type requested, if they exist, could reasonably be expected to reveal law enforcement intelligence information. Accordingly, I find that records of the type requested, if they exist, would contain information which would qualify for exemption under section 8(1)(g).

Section 8(3) of the Act provides the Police with the discretion to refuse to confirm or deny the existence of records responsive to the appellant’s request. This section provides:

A head may refuse to confirm or deny the existence of a record to which subsection (1) or (2) applies.

A requester in a section 8(3) situation is in a very different position than other requesters who have been denied access under the Act. By invoking section 8(3), the Police are denying the requester the right to know whether a record exists, even when one does not. This section provides the Police with a significant discretionary power which I feel should be exercised only in rare cases.

In Order P-542, former Inquiry Officer Asfaw Seife articulated the following test to determine the appropriateness of the application of section 14(3) of the provincial Freedom of Information and Protection of Privacy Act, which is the equivalent of section 8(3) of the Act.

An institution relying on section 14(3) of the Act must do more than merely indicate that records of the nature requested, if they exist, would qualify for exemption under sections 14(1) or (2). The institution must establish that disclosure of the mere existence or non-existence of such a record would communicate to the requester information that would fall under either section 14(1) or (2) of the Act.

I adopt this test for the purpose of this appeal.

Following my review of the representations of the Police and the appellant, I conclude that merely confirming the existence or non-existence of records of the type requested would communicate to the appellant information which would fall within section 8(1) of the Act. I find that revealing the existence or non-existence of a police intelligence file relating to a requester could reasonably be expected to interfere with the gathering of law enforcement intelligence information by the Police. Accordingly, I find that section 8(3) applies in the circumstances of this appeal.

ORDER:

I uphold the decision of the Police to refuse to confirm or deny the existence of records responsive to the request.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

September 18, 1997